

United Artists of Puerto Rico and Union De Tronquistas De Puerto Rico, Local 901, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 24-CA-4595

March 15, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

Upon a charge filed on November 2, 1981, by Union de Tronquistas de Puerto Rico, Local 901, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on United Artists of Puerto Rico, herein called Respondent or Employer, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 24, issued a complaint and notice of hearing on November 20, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(2), (6), and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on September 28, 1981, following a Board election in Case 24-RC-6639, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate herein;¹ and that, commencing on or about October 7, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On or about December 2, 1981, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On December 11, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on December 21, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Sum-

mary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and in its response to the Notice To Show Cause, Respondent maintains that the certification of the Union was invalid. Respondent admits its refusal to bargain, but denies that its refusal violated Section 8(a)(5) and (1) of the Act. Specifically, Respondent contends that the unit set forth in the complaint is not appropriate for the purposes of collective bargaining; that a majority of the employees in the appropriate collective-bargaining unit have chosen the Union herein as their collective-bargaining representative; that the Regional Director violated the due-process clause of the fifth amendment of the United States Constitution and the Board's Rules and Regulations in the investigative procedure and the processing of the objections; and that the Employer appropriately withdrew its consent to the election.

A review of the entire record, including the record in Case 24-RC-6639, shows the following:

On June 22, 1981, the Union filed a petition in Case 24-RC-6639 seeking to represent a unit including all porters, cashiers, candy girls, ushers, and movie projector operator employed by the Employer at its movie theaters located at Carolina (U.A. Plaza Carolina and U.A. 150 Laguna Gardens) and Santurce (Paramount), Puerto Rico, excluding all office clerical employees, guards, and supervisors as defined in the Act. On July 14, 1981, the Employer's district manager, Rafael Ramos Cobrain, and Union Representative Miguel A. Torres executed, with the approval of the Regional Director, a Stipulation for Certification Upon Consent Election for the above-described unit.

On July 15, 1981, the Employer's attorney, Edwin Quinones, filed a motion requesting the Board to "eliminate" the aforesaid stipulation and order a hearing to enable the Employer to express its views concerning the petition filed by the Union. In support of the motion, Quinones stated that on July 14, 1981, the parties attended a "hearing," i.e., a conference, with Board Agent Awilda Morales, and the Employer, through Quinones, consented to an election to be held on August 17, 1981. Quinones was thereafter informed by the Employer that his consent to an election

¹ Official notice is taken of the record in the representation proceeding, Case 24-RC-6639, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

was "deauthorized." The Employer based its determination on "its firm belief that there existed a series of legal and technical aspects which should [have] been discussed at [the conference] and in addition that there had been a misunderstanding" between Quinones and the Employer as to the latter's desire to have a hearing regarding the Union's petition.

On July 17, 1981, the Regional Director, who pointed out that the Employer desired "to litigate certain unspecified legal and technical issues," denied its motion on the ground that the stipulation had been approved by the Regional Director; that it was executed by the Employer's district manager, Rafael Ramos Cobrain, rather than its counsel; and that the Employer made no affirmative showing of unusual circumstances or indicated in said motion that its request was joined in by the Union.

On July 21, 1981, the Employer filed a motion for reconsideration which was denied by the Regional Director on July 23, 1981.

On August 17, 1981, an election by secret ballot was conducted. The tally of ballots shows that, of approximately 62 eligible voters, 56 cast ballots, of which 42 were for, and 8 against, the Union. Six ballots were challenged, an insufficient number to affect the results of the election.

On August 21, 1981, the Employer filed timely objections to the election, stating that the Union's "conduct, statements and activities . . . in the pre-election and election campaign . . . were such as to have constituted improper campaign practices." In addition, the Employer stated that "the Regional Director and the Board erred in not granting [its] request to set aside the agreement for election . . . and to proceed to a full hearing."

On September 4, 1981, the Regional Director issued a Report on Objections wherein he held with respect to the first contention that the Employer had not complied with Section 102.69(a) of the Board's Rules and Regulations, which requires the submission of a short statement giving the reasons for the objections. With respect to the second contention, the Regional Director found no merit therein for the reasons cited in his denial of the Employer's motion of July 17, 1981. Accordingly, the Regional Director recommended that the Employer's objections be overruled in their entirety and that the Union be certified as the exclusive collective-bargaining representative of the Employer's employees in the appropriate unit. The Employer did not thereafter file exceptions to the Regional Director's Report on Objections.

On September 28, 1981, the Board issued a Decision and Certification of Representative wherein it

adopted the recommendations of the Regional Director.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances, a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.²

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding,³ and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is engaged in the retail operation of theaters exhibiting motion pictures in Puerto Rico. During the past year, Respondent, in the course and conduct of its business, purchased and caused to be transported and delivered to its places of business films and other goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported and delivered to its theaters in interstate commerce directly from points located outside Puerto Rico.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Union de Tronquistas de Puerto Rico, Local 901, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

² See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941), Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

³ As noted above, no exceptions to the Regional Director's Report on Objections were filed by Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All porters, cashiers, candy girls, ushers, and movie projector operators employed by the Employer at its movie theaters located at Carolina (U.A. Plaza Carolina and U.A. 150 Laguna Gardens) and Santurce (Paramount), Puerto Rico, but excluding all office clerical employees, guards and supervisors as defined in the Act.

2. The certification

On August 17, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 24, designated the Union as their representative for purposes of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on September 28, 1981, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about October 7, 1981, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about October 7, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since October 7, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. United Artists of Puerto Rico is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Union de Tronquistas de Puerto Rico, Local 901, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All porters, cashiers, candy girls, ushers, and movie projector operators employed by the Employer at its movie theaters located at Carolina (U.A. Plaza Carolina and U.A. 150 Laguna Gardens) and Santurce (Paramount), Puerto Rico, excluding all office clerical employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since September 28, 1981, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about October 7, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, United Artists of Puerto Rico, Carolina and Santurce, Puerto Rico, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Union de Tronquistas de Puerto Rico, Local 901, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

All porters, cashiers, candy girls, ushers and movie projector operators employed by the Employer at its movie theaters located at Carolina (U.A. Plaza Carolina and U.A. 150 Laguna Gardens) and Santurce (Paramount), Puerto Rico, but excluding all office clerical employees, guards, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at all of the movie theaters involved herein, in both English and Spanish, copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 24, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 24, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

⁴ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Union de Tronquistas de Puerto Rico, Local 901, International Brotherhood of Teamsters Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding

is reached, embody such understanding in a signed agreement. The bargaining unit is:

All porters, cashiers, candy girls, ushers and movie projector operators employed by the Employer at its movie theaters located at Carolina (U.A. Plaza Carolina and U.A. 150

Laguna Gardens) and Santurce (Paramount), Puerto Rico, but excluding all office clerical employees, guards and supervisors as defined in the Act.

UNITED ARTISTS OF PUERTO RICO